IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU

and

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

TUESDAY, THE 10TH JULY, 2007/19TH ASHADHA 1929

W.A.NO.315 OF 2004

(O.P.NO.25887 OF 1998 DATED 14.8.2003)

APPELLANTS/RESPONDENTS:

1. THE COMMISSIONER OF EXCISE, BOARD OF REVENUE (EXCISE) THIRUVANANTHAPURAM.

2. THE ADDITIONAL EXCISE COMMISSIONER, KAVADIAR, THIRUVANANTHAPURAM.

3. THE ASSISTANT EXCISE COMMISSIONER, KOZHIKODE

BY SPECIAL GOVERNMENT PLEADER SMT.MEERA

RESPONDENTS/ADDITIONAL PETITIONER:

1. P.K.THOMAS, PADINJAREKKARAYIL HOUSE,KOTHAMANGALAM ERNAKULAM DISTRICT (DIED)

2. P.T.VARGHESE, S/O.LATE P.K.THOMAS, PADINJAREKKARAYIL HOUSE, KOTHAMANGALAM, ERNAKULAM.

BY ADV.T.R.RAVI & GEORGE POONTHOTTAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10.7.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 315 OF 2004

Dated this the 10th July, 2007

JUDGMENT

H.L.DATTU, C.J.

For offences under the provisions of the Abkari Act, a mini lorry bearing Registration No.KCE 5727 was seized by the authorities under the Abkari Act. Late P.K.Thomas, after coming to know about the seizure of the vehicle, moved this Court in O.P.No.8864 of 1988 inter alia requesting this Court to release the vehicle in question to him.

2. Learned single Judge of this Court by judgment dated 23rd November, 1988 has disposed of O.P.No.8864 of 1988 itself, directing the respondents to release the vehicle subject to the petitioner complying with the conditions imposed in the judgment itself. The conditions that were imposed are as under:

> "(a) The petitioner shall satisfy the first respondent about his ownership and right to possession of the vehicle in question.
>
> (b) The petitioner shall also execute a bond before the first respondent undertaking to produce the vehicle whenever required and to keep it in good repair and condition.
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> (c) The petitioner shall also furnish security to the satisfaction of the first respondent by way of bank guarantee or immovable property for the value of the vehicle as fixed by the latter."

3. The other condition that was imposed in the judgment itself was that the petitioner shall produce the vehicle in good repair and condition as and when required by respondent Nos.1 and 2. and in default of doing so, it will be open for the respondents to forfeit the amount of the security to the State.

4. After disposal of the Original Petition, petitioner had offered the immovable property as security for the value of the vehicle and also has

executed a bond as directed by this Court. In the bond it is stated, that he will keep the vehicle in the same condition and no change whatsoever will be made and it will not be sold, mortgaged, dismantled, etc. during the pendency of the proceedings.

5. At the time of releasing of the vehicle, the Mechanical Engineer (Excise) had inspected the vehicle and had assessed the market value of the vehicle at Rs.1,40,000/-.

6. After the release of the vehicle as directed by this Court, the respondents have completed the confiscation proceedings in exercise of their powers under Section 67B of the Abkari Act by their order dated 24.4.1998. Sri.P.K.Thomas, when he was alive, had questioned the confiscation order before the Appellate Authority, who by its order dated 26.8.1998 had rejected the appeal. Thereafter, the petitioner had carried the matter in a revision before the competent authority. Even the revisional authority had rejected the revision petition by its order dated 24.11.1998. Aggrieved by the aforesaid orders, Sri.P.K.Thomas was before this Court in O.P.No.25887 of 1998.

7. During the pendency of the Original Petition, P.K.Thomas has expired and with the permission of the Court, his son one P.T.Varghese has come on record as additional petitioner.

8. At the time of hearing of the Original Petition, the additional petitioner through his learned counsel has informed the Court, that, he is no longer interested in prosecuting the proceedings and he is prepared to surrender the vehicle which was released to his father some time in the year 1988. Though this prayer was opposed by the respondents in the Original Petition, the learned

single Judge has proceeded to allow the Original Petition by accepting the offer made by the additional petitioner. The order passed by the learned Judge reads as under:

> "7. I have heard the learned Government Pleader also.
>
> 8. The seizure of the vehicle was in the year 1988. About 15 years have elapsed after the seizure. The vehicle was released to Sri.Thomas on furnishing security of immovable property as directed by this Court. I am of the view that the request made by the petitioner to discharge the security of the immovable properties is only just and reasonable.
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> 9. Petitioner shall therefore surrender vehicle No.KCE 5727 before respondent No.3 within four weeks from today. On such surrender, respondent No.3 shall cancel the security bond executed by petitioner's father Sri.Thomas in terms of the order passed by this Court in O.P.No.8864/1988. Respondent No.3 shall hand over the original documents of title to the petitioner."

9. Aggrieved by the aforesaid order passed by the learned single Judge, the State is before us in this Writ Appeal.

10. We have heard learned Government Pleader and also the learned counsel for the respondents in the Writ Appeal.

11. By filing I.A.No.847 of 2004, the appellants have produced additional documents. In that they have produced a letter dated 13.11.2003, written by the Assistant Executive Engineer, Kozhikode to the Assistant Excise Commissioner, Kozhikode. The Assistant Executive Engineer, after inspection of the vehicle in question, has stated as under:

> "Tata 407 Mini Lorry KCE-5727, 1987 Model.
>
> The vehicle require patch work to front cabin doors, back prek up wooden body major reconditioning, tyres and battery unserviceable, require upholstery works and painting, engine work is expected considering its present condition and depreciation its assessed value is fixed as Rs.40,000/- (Rupees Forty thousand only)."

12. The question now for our consideration is, whether the learned single Judge was justified in accepting the offer made by the additional petitioner and directing the respondents to release the security bond executed by the father of the additional petitioner and also to handover the original documents of title to the additional petitioner.

13. Our answer to the aforesaid question is positive no. The reason being, that, during the confiscation proceedings under the Abkari Act, father of the additional petitioner was before this Court in O.P.No.8864 of 1988. On his request, the vehicle came to be released in his favour subject to certain conditions. One of the conditions was that whenever the vehicle is required, the same shall be produced by the petitioner before the Excise Authorities. The other was to execute a bond undertaking to produce the vehicle whenever required and to keep it in good repair and condition. There was also a condition that the petitioner shall furnish security by way of bank guarantee or immovable property for the value of the vehicle as fixed by the authorities under the Act.

14. While complying with the judgment passed by this Court, the respondents had valued the vehicle at Rs.1,40,000/-.

15. One of the conditions in the judgment as well as in the bond executed by the father of the additional petitioner is that he should surrender the vehicle whenever it is required by the authorities under the Act in the same condition as it existed on the date of release of the vehicle.

16. The father of the additional petitioner had questioned the confiscation proceedings. During the pendency of the Original Petition, father of the additional petitioner expired. For the reasons best known, the additional

petitioner requested the Court to accept surrender of the vehicle and further to cancel the security bond and to direct the respondents to handover the original documents of title to the addtiional petitioner. This offer was opposed by the respondents on the ground that the value of the vehicle has diminished and the vehicle is not in good repair and condition and, therefore, the offer made by the additional petitioner should not be accepted by the Court. They had also brought to the notice of the Court that the seizure was some time in the year 1988, the release of the vehicle was in the year 1989 and that the value of the vehicle as on the date of disposal of the Original Petition was merely Rs.40,000/-.

17. Learned Judge, in our opinion, ought to have looked into the earlier conditions and directions issued by this Court and further, the learned Judge ought to have noticed that a bond was executed by the father of the additional petitioner, undertaking that he will keep the vehicle in the same condition and he will not make any changes whatsoever. Therefore, it only means that when the vehicle is surrendered to the respondents it will be in the same condition when it was released in favour of the petitioner's father in the year 1989.

18. We have also seen the report of the Mechanical Engineer (Excise), who had inspected the vehicle on 9.12.1988 and had valued the vehicle at Rs.1,40,000/-. When the additional petitioner surrendered the vehicle, the value of the said vehicle was Rs.40,000/-. That only means that the condition that was imposed by this Court while releasing the vehicle had been violated by the father of the additional petitioner. Therefore, the offer made by the additional petitioner should not have been accepted by the learned Judge and further

should not have directed the authorities to release the security and handover the title deeds etc., to the additional petitioner, since one of the conditions imposed while disposing of O.P. No. 8864 of 1988 was that the petitioner should produce the vehicle in good repair and condition and in default of doing so it will be open for the respondents to forfeit the amount of security to the State. In view of the above, we cannot sustain the order passed by the learned single Judge. Therefore, the impugned judgment requires to be set aside. Since the additional petitioner did not request the learned single Judge to decide the case on merit, at this stage, it may not be necessary for us to remand the matter to the learned single Judge for fresh disposal of the Original Petition.

19. In view of the above, the Writ Appeal filed by the State requires to be allowed and it is allowed. The judgment delivered by the learned single Judge in so far as release of the security bond and handing over of title deeds to the additional petitioner is set aside.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK